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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,565	08/24/2004	Ralf Wiedemann	102792-333	3643
27389	7590	03/03/2010	EXAMINER	
PARFOMAK, ANDREW N. NORRIS MCLAUGHLIN & MARCUS PA 875 THIRD AVE, 8TH FLOOR NEW YORK, NY 10022			DOUYON, LORNA M	
			ART UNIT	PAPER NUMBER
			1796	
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			03/03/2010 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/505,565

Applicant(s)

WIEDEMANN ET AL.

Examiner

Lorna M. Douyon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1.5-9 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1.5-9 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 10, 2010 has been entered.
2. Claims 1, 5-9 and 15 are pending. Claims 2-4, 10-14 are cancelled.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 5-9 and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Becks et al. (WO 02/057402) for the reasons set forth in the previous office action and which is repeated below for Applicants' convenience.

Becks teaches a liquid composition comprising a transparent or translucent liquid medium and solid particles contained within the liquid medium wherein the composition is contained within a pouch made from a transparent or translucent water-soluble material, so that the individual solid particles are visible from outside of the pouch, the solid particles having a mean geometric diameter of between 0.5mm and 12 mm (see

abstract). One of the advantages of the invention of Becks is that the solid particles do not necessarily need to be stably suspended in the liquid medium, but rather the solid particles may sink or float in the liquid medium (see page 2, last paragraph). The liquid composition can have any viscosity and the viscosity may be controlled, if desired, by using various viscosity modifiers (see page 7, lines 10-14). The compositions are typically laundry or dishwashing compositions (see page 7, lines 19-21). In one preferred embodiment, the solid particle is a particulate bleach or bleach activator (see page 21, lines 17-18), or an enzyme encapsulate (see page 22, lines 27-28). In Example 2b, Becks teaches a low moisture liquid detergent composition with one 10 mm fragrance sphere/capsule in a pouch of soluble polyvinyl alcohol film, wherein the spherical particle of sample b is less dense than the detergent and float in the detergent in the pouch and rapidly dissolve when the pouch is added to the wash (see entire page 26). Becks, however, fails to specifically disclose one particle of bleach, bleach activator or enzyme floating in the detergent in the pouch.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have prepared a packaged detergent wherein one particle of bleach, bleach activator or enzyme is floating in the detergent because Becks teaches that bleach, bleach activator or enzyme are preferred solids on page 21, lines 17-18 and page 22, lines 27-28, and on page 2, last paragraph, such solids may float, and on page 26, last paragraph and page 28, line 3, only one solid is used. Hence, in view of the above teachings, a person of ordinary skill in the art would have been motivated to prepare one solid of bleach, bleach activator or enzyme which floats in the detergent.

5. Claims 1, 5-8 stand rejected under 35 U.S.C. 103(a) as being obvious over Pfeiffer et al. (US Patent No. 6,492,312), hereinafter "Pfeiffer" for the reasons set forth in the previous office action and which is repeated below for Applicants' convenience.

Pfeiffer teaches a water soluble sachet comprising a detergent composition having a discrete particle that enhances cleaning in a dishwashing machine (underlining supplied, see abstract; col. 1, lines 7-10), wherein the dishwashing composition is a gel which comprises discrete particles having an approximate diameter from about 100 to about 5000 microns (5mm) (see col. 2, lines 60-63) and having a viscosity from about 100 to about 45,000 cps (about 100 to about 45,000 mPas) (see col. 4, lines 56-61). The discrete particles may be a wax-encapsulated bleach (see col. 9, line 17). Suitable materials for the water soluble sachet include polyvinyl alcohol (see col. 3, lines 48-65). Pfeiffer, however, fails to disclose the density of the solid particle, and one solid floating on the outer surface of the liquid.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the density of the discrete particle, for example, the wax-encapsulated bleach to have a density lower than the density of the dishwashing composition and to have a discrete wax-encapsulated bleach particle to float on the outer surface of the liquid, considering that the bleach is encapsulated in wax, which is lighter, and would have been expected to float in the composition.

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6. Claim 9 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Pfeiffer as applied to the above claims, and further in view of Dasque et al. (WO 01/60966), hereinafter "Dasque" for the reasons set forth in the previous office action and which is repeated below for Applicants' convenience.

Pfeiffer teaches the features as described above. Pfeiffer, however, fails to disclose the water soluble sachet comprising a detergent composition for use in a laundry washing machine.

Dasque, an analogous art, teaches that a detergent composition in a water-soluble pouch comprising similar ingredients (see abstract) are prepared as laundry or dishwashing compositions (see page 21, lines 29-32), hence useful for laundry or dishwashing machines.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the product of Pfeiffer not only for dishwashing purposes but also for laundry washing because it is known from Dasque that a similar product is useful for both laundry and dishwashing applications.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

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1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1, 5-9 and 15 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6 and 7 of U.S. Patent No. **7,407,923**. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are drawn to similar packaged detergent compositions, and similar methods of washing dishes or laundry, the composition having at least one liquid (which reads on the first and second fluid phase of US '923) and a solid having the same sizes and overlapping densities. Even though the movement of the solid within the container in US '923 is restricted, the solid, however, in both sets of claims, floats on the outer surface of the liquid, or the first fluid.

Response to Arguments

9. Applicants' arguments filed February 10, 2010 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based upon Becks, Applicants argue that while Becks generally teaches that viscosity can be modified, there is nothing in Becks that would suggest to a skilled artisan to formulate a composition having the

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claimed viscosity, and the Examiner's suggestion to do so is based on impermissible hindsight analysis. Applicants also argue that the present inventors discovered that the optimum viscosity is at least 100 MPa.s, which is not simply a routine optimization, rather, it is an inventive aspect that allows the presently claimed composition to achieve the surprising and unexpected results.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). On page 7, lines 10-14, Becks teaches that the liquid composition can have any viscosity and the viscosity may be controlled, if desired, by using various viscosity modifiers such as hydrogenated castor oil and/or solvents. Said viscosity modifiers should adjust the viscosity of the liquid composition within those recited in the instant claims. With regards to the viscosity having at least 100mPas providing surprising and unexpected results, Applicants have not provided any evidence or showing of criticality when compared to the close prior art like Becks.

With respect to the obviousness rejection based upon Pfeiffer, and Pfeiffer in view of Dasque, Applicants argue that Pfeiffer teaches multiple particles distributed throughout the liquid, whereas the presently claimed invention is directed to only one

solid floating on the outer surface of the liquid. Applicants also argue that the Examiner has cited page 1, lines 7-10 of Pfeiffer to support the contention that Pfeiffer teaches a single particle, however, the applicants respectfully submit that this usage is not intended to be in the singular, as Pfeiffer describes "discrete particles" throughout the specification. Applicants also argue that a single particle would not fall within the required weight ratio taught by Pfeiffer in col. 2, lines 62-65, i.e., "the discrete particles have an approximate diameter from about 100 to 5000 microns, and the discrete particles and gel being in a particle to gel weight ratio from about 0.005 to 0.4 to 1."

The Examiner respectfully disagrees with the above arguments because Pfeiffer teaches, in the abstract and col. 1, lines 7-10, a water soluble sachet comprising a detergent composition having a discrete particle (suggesting one particle which meet the limitation of "one solid" of the instant claims) that enhances cleaning in a dishwashing machine. A singular particle is also cited in col. 9, lines 17-20, which states that "the discrete particle is an encapsulated bleach..." hence, singular and plural particles are taught by Pfeiffer. As stated above, it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the discrete wax-encapsulated bleach particle of Pfeiffer whose particle size overlaps those recited to float on top of the liquid composition, considering that the bleach is encapsulated in wax, which is lighter, and would have been expected to float in the composition. Applicants' argument that a single particle would not fall within the required weight ratio taught by Pfeiffer in col. 2, lines 62-65 is a conclusory statement not

supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972).

Applicants also argue that a packaged detergent composition having one solid floating on the outer surface of the liquid would not have been predictable based on the disclosure of Pfeiffer. Applicants also argue that there is no indication within Pfeiffer that the release of the solid particles disclosed therein can be affected by the density of the solid and the location of the solid particle within the liquid, and thus, one skilled in the art, at the time of the invention, could not predict that including one solid in the liquid composition with a density such that it floats on the outer surface of the liquid would favorably decrease the release time of the solid into the wash liquor.

The response above applies here as well. All disclosures of the prior art, including non-preferred embodiment, must be considered. See *In re Lamberti and Konort*, 192 USPQ 278 (CCPA 1967); *In re Snow* 176 USPQ, 328, 329 (CCPA 1973). In addition, the examples in the specification (see pages 27-29) have been carefully considered, however, they are not commensurate in scope with the present claim 1. The viscosities of the liquid compositions in the cited examples were not mentioned, and the showing is only true for the specific components and particle sizes in the examples.

With respect to the rejection of claim 9 based upon Pfeiffer in view of Dasque, Applicants argue that this claim is dependent from claim 1, and as discussed above, claim 1 is not obvious over Pfeiffer, and such a method of washing laundry is not obvious over Pfeiffer in view of Dasque.

The above response to Pfeiffer applies here as well. Hence, the combination of Pfeiffer with Dasque is maintained.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to 3 whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Lorna M Douyon/
Primary Examiner, Art Unit 1796